

**IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC,
AT KUNIGAL**

**Present : Sri. Kishor Kumar .M. B.A. LLB.,
Addl. Civil Judge & JMFC,
Kunigal.**

Dated this the 06th day of March 2018

O.S. NO. 384/2017

Plaintiffs :

1. Sri Srinivasa
S/o Late Mudlaiah,
Aged about 46 Years,

2. Sri Govindaiah
S/o Late Mudlaiah,
Aged about 41 Years,

3. Sri Sreenivasa
S/o Venkatesh,
Aged about 27 Years,

4. Smt. Gangamma
D/o Late Venkatesh,
Aged about 28 Years,

All are R/at Mallipalya,
KRS Agrahara, Ward No.22,
Kunigal Town.

(Rep by pleader Sri B.R.S. for plaintiffs)

V/s

Defendants : **1. Sri Rangaswamy**
S/o Late Narasaiah,
Aged about 30 Years,

2. Smt. Jayalakshmi
W/o Rangaswamy,
Aged about 26 Years,

Both are R/at Nademavinapura Village,
Yedyur Hobli, Kunigal Taluk.

(Rep by pleader Sri N.R.R. for Defendants)

I.A. No. 1

Plaintiffs/Applicants : Sri Srinivasa and Others

V/s

Defendants/Opponents : Sri Rangaswamy and Another

ORDERS ON IA NO. 1

The plaintiffs have filed this application U/o XXXIX Rule 1 and 2 of CPC, prays for grant of temporary injunction restraining the defendants, their agents, servants, attorneys or anybody acting on their behalf from interfering with the plaintiffs peaceful possession and enjoyment over the suit property pending disposal of the suit.

2. In support of the application plaintiff No.2 has sworn to the affidavit stating that the plaintiffs are absolute owner of the suit property. That one Venkataiah @ Venkatakoramaiah had three sons by name Venkataiah, Giryappa and Mudlaiah. After the death of Venkataiah @ Venkatakoramaiah his 2nd son by name Giryappa acquired the suit property bearing Khatha

No. 1520-1412 measuring 27X23 feet house situated at Mallipalya, K.R.S Agrahara, Kunigal by way of succession. Accordingly revenue entries entered in his name. The said Giryappa was in possession and enjoyment of the suit property without any interference from anybody. After the demise of Giryappa his wife Yallamma continued to be in possession and enjoyment of the suit property. After the death of Yallamma the plaintiffs are in possession and enjoyment of the suit property without any obstruction or interference from anybody. After the demise of Yallamma, khatha of suit property mutated in the name of plaintiffs.

3. The plaintiff No.2 in his affidavit further stated that inspite of having no right, title or interest over the suit property, the defendants trying to interfere with the peaceful possession and enjoyment of the plaintiff over suit property. However, the plaintiffs resisted the illegal act of the defendants. During the first week of July 2017, the defendants came near the suit property along with their supporters and called upon the plaintiffs for compromise and discussion and

threatened the defendants with dire consequences. In spite of giving complaint against the defendants, the concerned police have not taken action against them. The concerned police issued an endorsement stating that dispute is in civil nature and directed the plaintiffs to approach court of law. Hence, the plaintiffs constrained to file this suit.

4. The plaintiff No.2 in his affidavit further stated that, the plaintiffs have prima facie case and balance of convenience lies in their favour. The order of temporary injunction restraining the defendants from interfering with the plaintiffs peaceful possession and enjoyment over the suit property is granted in their favour no harm or injustice would be caused to other side. On the contrary the plaintiffs will be put to great hardship and injustice which cannot be compensated in any means. Accordingly, the plaintiffs sought for allowing the IA No. 1 as prayed for:

5. Upon service of suit summons, the defendants appeared through their counsel. Defendants filed their written statement and objections to I.A. No.1.

6. The defendants in their written statement and objections to I.A. No.1 denied the averments made in para No.3 of the plaint except the averments of Giriyappa was in possession and enjoyment of the suit property without any interference from anybody. The defendants denied other plaint averments in toto as false and incorrect. The defendants denied their address mentioned in the cause title of the plaint and contended that their correct address is #2019/01, Ward No.22, Opp. Veerabhadreshwara Kalyana Mantapa, Mallipalya, Kunigal Town.

7. The defendants in their written statement further contended that suit property originally belonged to Government and the same was granted in favour of Giriyappa S/o Late Venkataiah about 50 years back. Since then he was in possession and enjoyment of the same and revenue entries in respect of suit property was also entered in his name. The said Giriyappa was died on 26.09.2003 and after his demise his wife Yallamma succeeded to the suit property. Smt. Yallamma and her foster son i.e., defendant No.1 were in

peaceful possession and enjoyment of the suit property and they are paying tax to the Municipality regularly. The said Yallamma was died on 15.05.2017 in suit schedule house. The said Giryappa and Yallamma had no issues. Thus, they have taken the 1st defendant as their foster son. The 1st defendant is the son of one Doddamma W/o Narasaiah, she is younger sister of the Smt. Yallamma. The 1st defendant look after the welfare of the said Giryappa and Yallamma during their life time and after their death the defendants have performed their funeral and obsequies ceremonies. After the death of Giryappa and Yallamma the defendants are in possession and enjoyment of the suit property and they are residing in suit property with their family members. After the demise of Giryappa and Yallamma the defendants approached the TMC, Kunigal and by producing the documents like Election ID Card, Aadhar Card, Ration Card and G-tree got the khatha of suit property in his name on Pavathi Varasu. The plaintiffs are utter strangers to the suit property and they have no manner of right, title, interest or possession over the suit property. In spite of that by creating false documents they are claiming

that they are the legal heirs of said Giriyappa and illegally attempting to dispossess the defendants from suit property. At the instance of plaintiffs, the Town Municipal Council created false documents in the name of plaintiffs in respect of suit property. Hence, the defendants approached the municipal authority and questioned their illegal act of changing the khatha of suit property in the name of plaintiffs. The municipal authority issued an endorsement Dt.22.08.2017 directing the defendants to approach civil court to establish their right and title over the suit property. Hence, the defendants filed comprehensive suit for declaration and consequential relief of injunction against plaintiffs before Prl. Civil Judge & JMFC, Kunigal in O.S. No. 415/2017. The defendants in their written statement further contended that at no point of time the plaintiffs are in possession of the suit property. Thus, without possession, suit of the plaintiffs for bare injunction is not maintainable. On all these grounds the defendants prays for dismissal of the I.A. No.1.

8. I have heard the arguments of both sides and perused the entire record. In the facts and circumstances of the case, the points that arise for my consideration are:

1. Whether there exists prima facie case in favour of the plaintiffs?
2. Whether the balance of convenience lies in favour of the plaintiffs?
3. Whether the plaintiffs would suffer irreparable injury if the prayer for interim injunction is disallowed?
4. What order?

9. My answer to the above points are as under:-

- | | | |
|-------------|---|--------------------|
| Point No. 1 | : | In the Negative |
| Point No. 2 | : | In the Negative |
| Point No. 3 | : | In the Negative |
| Point No. 4 | : | As per final order |

For the following:

REASONS

Points No.1 to 3:

10. The plaintiffs have filed this suit claiming decree for permanent injunction restraining the defendants from interfering with the plaintiffs lawful possession and enjoyment of the suit property. Since Point No.1 to 3 are inter-related, hence, I have discussed them together for the sake of brevity

and to avoid the repetition of the facts. As I have already narrated in brief as to what the case of the plaintiffs is and what the defence of the defendant is. Hence, it is not required to reproduce the same again in detail.

11. As could be seen from the contentions urged in the I.A. No. 1, it is the case of the plaintiffs that after the demise of their uncle and aunt by name Giriyappa and Yallamma the plaintiffs succeeded to the suit property since the said Giriyappa and Yallamma had no issues. Accordingly khatha of suit property mutated in their name. The defendants in spite of having no right, title or interest over the suit property, they are trying to interfere with the plaintiffs peaceful possession and enjoyment of the suit property.

12. On the other hand the defendants contended that defendant No.1 is son of younger sister of Smt. Yallamma. Since the said Giriyappa and Yallamma had no issues, they taken him as their foster son. He had look after the welfare of the said Giriyappa and Yallamma during their life time and after their death the defendants have performed their funeral

and obsequies ceremonies. The defendants are in possession and enjoyment of the suit property. The plaintiffs are no way concerned with the suit property. However, the plaintiffs by creating false documents denying the title and ownership of the defendants. Hence, the defendants have filed comprehensive suit for declaration and consequential relief of injunction against them in O.S. No. 415/2017 on the file of Prl. Civil Judge & JMFC, Kunigal.

13. The plaintiffs in support of their case produced Khatha extract of suit property for the year 2011-12 which is stands in the name of Giriyappa. The 2nd document is Khatha extract of suit property for the year 2017-18 stands in the name of plaintiffs. The plaintiffs have produced death certificate of Giriyappa and Yallamma and genealogy table. The plaintiffs have produced one tax paid receipt Dt.12.01.2012. On perusal of the same it reveals that Smt. Yallamma had paid tax of Rs.275/- to the TMC, Kunigal on 12.01.2012. The plaintiffs have produced endorsement issued Kunigal Police and Encumbrance certificate in respect of suit

property. The plaintiffs have produced Khatha extract of suit property for the year 2017-18, wherein khatha entered in the name of defendant No.1 is cancelled by the orders of Chief Officer, Dt.27.07.2017. The plaintiffs have produced copy of the Ration Cards belongs to the plaintiffs. The plaintiffs have also produced Voter List of Nademavinapura and copy of the Aadhar card of Defendant No.2. By producing Voter list and Aadhar card of defendant No.2 the plaintiffs vehemently contended that the defendants are residing at Nademavinapura Village not in suit property as contended by them.

14. To prove their contention the defendants have produced copy of the Khatha extract of suit property for the year 2017-18. In the said document khatha of suit property entered in the name of plaintiffs by cancelling the khatha stands in the name of defendant No.1 and Giriyappa S/o Venkataiah. The 2nd document produced by the defendants is khatha extract of suit property for the year 2017-18, wherein khatha of suit property mutated in the name of Defendant

No.1 on the basis of Pavathi Varasu. The defendants have produced 10 tax paid receipts Dt.01.06.2017. On perusal of the same it reveals that the defendant No.1 has paid tax with respect to suit property to TMC, Kunigal. The defendants have also produced Death Certificate of Giriyappa and Yallamma. The defendants have produced Genealogy tree, Copy of the Election ID card of Giriyappa, Yallamma and Defendant No.1 and Ration Card. The defendants have also produced Aadhar card of Defendant No.1 and deceased Smt. Yallamma. The defendants have also produced copy of the applications given to TMC, Kunigal seeking khatha extract of suit property. The defendants have produced copy of the order sheet and plaint in O.S. No. 415/2017 on the file of Prl. Civil Judge, Kunigal.

15. In this suit the plaintiffs and defendants both are claiming their possession over the suit property. The plaintiffs claiming that after the death of their uncle and aunt by name Giriyappa and Yallamma they succeeded to the suit property since, the said Giriyappa and Yallamma had no issues. On the contrary the defendants contended that since Giriyappa and

Yallamma had no issues, they have taken the defendant No.1 as their foster son and defendant No.1 reside with them along with his wife who is defendant No.2 herein. The plaintiffs have produced khatha extract of suit property for the year 2017-18. In the said document khatha of suit property mutated in the name of plaintiffs by cancelling the khatha stands in the name of defendant No.1 and Giriyappa with a shara that

“ಷರಾ:-ದಿನಾಂಕ 16-08-2017 ರಂದು ಮುಖ್ಯಾಧಿಕಾರಿಗಳು ಆಸ್ತಿ ತೆರಿಗೆ ಹಕ್ಕು ವರ್ಗಾಯಿಸಲು ಆದೇಶಿಸಿದ್ದು ಮತ್ತು ತುಮಕೂರು ಎಸಿಬಿಯವರು ಖಾತೆಯನ್ನು ಮೇಲ್ಕಂಡ ಅರ್ಜಿದಾರರಿಗೆ ವರ್ಗಾಯಿಸಲು ಸೂಚಿಸಿದ್ದರಿಂದ ಅರ್ಜಿದಾರರ ಹೆಸರಿಗೆ ಜಂಟಿಯಾಗಿ ಆಸ್ತಿ ತೆರಿಗೆ ಹಕ್ಕು ವರ್ಗಾಯಿಸಿದೆ.”

16. On perusal of the above document it is not forthcoming that prior to cancelling the khatha stands in the name of first defendant whether TMC, Kunigal have initiated any khatha proceedings or not. It is very strange that the TMC, Kunigal have mutated the khatha of suit property in the name of plaintiffs on the directions of Anti Corruption Bureau, Tumakuru. Learned counsel for defendants vehemently argued that the TMC, Kunigal have cancelled the khatha stands in the name of defendant No.1 arbitrarily without giving prior notice to defendant No.1. TMC, Kunigal is a statutory body and they

have to act as per the provisions of law with respect to mutation of property. But in this case as aforementioned they have mutated the khatha in the names of plaintiffs as per the directions of Anti Corruption Bureau, Tumakuru without initiating any khatha proceedings. Of course, khatha of suit property is now standing in the name of plaintiffs. The said khatha entered in the name of plaintiffs on 16.08.2017 by cancelling the khatha stands in the name of Defendant No.1 and Giryappa. The plaintiffs have filed this suit on 18.09.2017 immediately after obtaining the khatha in their name in the month of August-2017. Of course, khatha is one of the factor to prove possession. In this case it is apparent that khatha of suit property was mutated in the name of defendant No.1 on the basis of Pavathi Varasu. Subsequently khatha was mutated in the name of plaintiffs. Except khatha extract the plaintiffs have not produced any other documents which proves their possession over suit property. The plaintiffs by producing Voter List and Aadhar Card of Defendant No.2 contended that the defendants are not residing in the suit property, but they are residents of Nademavinapura.

17. The defendants produced tax paid receipts. On perusal of the same it is apparent that the defendant No.1 paid tax to the Municipality. At this stage it is worthwhile to reproduce the plaint averments in para No. 4 which reads as follows:-

Further submitted that after the death of Yallamma W/o Giriyappa, the plaintiffs are in possession and enjoyment of the said property without any interference from anybody.

18. Likewise it is worthwhile to reproduce the written statement averments in Para No. 16(b) which reads as follows:-

After the death of Giriyappa, his wife Yallamma has succeeded to the suit property and she and her foster son the 1st defendant were in peaceful possession and enjoyment of the suit schedule property by regularly paying municipal tax.

19. On perusal of the above rival pleadings it is apparent that the plaintiffs are claiming that they are in possession of the suit property after the death of Smt. Yallamma. On the contrary the defendants claiming that they are in possession

of the suit property after the death of Giriyappa along with Smt. Yallamma. The plaintiffs by producing Voter List and Aadhar card of Defendant No.2 vehemently argued that the defendants never in possession of suit property and they are residents of Nademavinapura. The learned counsel for defendants in support of his contention relied on the copy of the ration card belonged to Smt. Yallamma, wherein the name of Smt. Yallamma, Rangaswamy (Defendant No.1) and Jayalakshmi mentioned and address of the above named persons shown as Ward No.22, Kunigal Taluk, Tumkur District. The date of issuance of said Ration Card bearing No. KNG22142293 is 27.05.2009. In the said ration card Rangaswamy shown as son and Jayalakshmi shown as daughter-in-law of Smt. Yallamma. Of course, the defendants themselves in their written statement pleaded that defendant No.1 is son of younger sister of Smt. Yallamma. Smt. Yallamma was died on 15.05.2017. The above Ration card is Dt.25.07.2009. On perusal of the same one can say that the defendants lived with Smt. Yallamma since from 2009. Apart from that after the death of Smt. Yallamma khatha of suit

property entered in the name of defendant No.1. Subsequently Khatha of suit property mutated in the name of plaintiffs. The learned counsel for defendants produced photographs and contended that the defendants are in possession and enjoyment of the suit property. It is not the case of the plaintiffs that even they were in possession of suit property during the life time of Smt. Yallamma. But the ration card produced by the defendants demonstrates that since 2009 Smt. Yallamma and Defendant No.1 and 2 are residing together in Ward No.22, Kunigal. It is also not in dispute that the defendant No.1 filed comprehensive suit for declaration and consequential relief of permanent injunction against the plaintiffs in OS No. 415/2017 on the file Prl. Civil Judge & JMFC, Kunigal which is pending for disposal. As aforementioned except khatha extract the plaintiffs have not produced any documents to prove their prima facie possession over the suit property. On the contrary the ration card produced by the defendants demonstrates that since 2009 Smt. Yallamma and defendants living together in suit property house situated at Ward No.22, Kunigal. Moreover, it is not

forthcoming from the pleadings of the plaintiffs that before entering the khatha in their name by cancelling the khatha stands in the name of defendant No.1 there was any khatha proceedings taken place. In totally the plaintiffs failed to prove their prima facie possession over the suit property.

20. It is well settled principles of law that in order to obtain an order of injunction , the party who seeks for grant of such injunction has to prove that he has made out a prima facie case, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case, it is not open to the court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted. The above view of mine is based upon the Judgment

of **Hon'ble Apex Court reported in (2010) 1 SCC 689** between **Kashi Math Samsthan and Another V/s Srimad Sudhindra Thirta Swamy and Another**. As such in this case the plaintiffs have failed to prove their possession over the suit property.

21. Under these circumstances and facts of the case, in the light of the above position of law, this court is of the considered opinion that the plaintiffs have failed to prove the prima facie case, balance of convenience lies in their favour and they would suffer irreparable loss and injury if no injunction order is granted. Hence, I answer Point No. 1 to 3 in the **Negative** and proceed to pass the following:-

ORDER

I.A No. 1 filed by the plaintiffs/
Applicants U/o XXXIX Rule 1 & 2 of
CPC is hereby is Dismissed.

No order as to costs.

(Dictated to the Typist directly on the computer, typed by her, printout taken by her and corrected by me and then pronounced by me in the open court on this the 06th day of March 2018.)

(Sri. Kishor Kumar .M.,)
Addl. Civil Judge & JMFC.,
Kunigal.